

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEUTSCHE BANK NATIONAL
TRUST COMPANY, TRUSTEE
FOR AMERICAN HOME
MORTGAGE ASSET TRUST
2006-6,

Plaintiff,

V.

ALEX ANDRUKOV, et al.,

Defendants.

CASE NO. C16-1871JLR

**ORDER GRANTING MOTION
TO REMAND**

I. INTRODUCTION

Before the court is Plaintiff Deutsche Bank National Trust Company, Trustee for American Home Mortgage Asset Trust 2006-6's ("Deutsche Bank") unopposed motion to remand. (Mot. (Dkt. # 6).) The court has considered the motion, the balance of the

1 record, and the applicable law. Being fully advised, the court GRANTS Deutsche Bank's
2 motion to remand and REMANDS this case to Whatcom County Superior Court.

3 **II. BACKGROUND**

4 On September 7, 2016, Deutsche Bank initiated an action in Whatcom County
5 Superior Court for unlawful detainer against Defendants Alex Andrukov, Tanya
6 Andrukov, and "all other occupants," (collectively "the Andrukovs") of the property
7 located at 1253 St. Paul Street, Bellingham, WA 98229. (Compl. (Dkt. # 1-1).) Deutsche
8 Bank alleges that it purchased the property in dispute at a trustee's foreclosure sale on
9 April 22, 2016, and the Andrukovs were served with a notice to vacate on May 27, 2016.
10 (Compl. ¶¶ iv-v.) Deutsche Bank further alleges that the Andrukovs have not vacated the
11 property. (*Id.*) The disputed property is located in Whatcom County. (*Id.* ¶ iii.)

12 On December 7, 2016, the Andrukovs, proceeding *pro se*, filed a notice of
13 removal of Deutsche Bank's action. (*See* Notice (Dkt. # 1).) The Andrukovs also filed
14 an application to proceed *in forma pauperis* ("IFP"). (IFP Mot. (Dkt. # 2).) On
15 December 16, 2016, Deutsche Bank moved to remand this case back to Whatcom County
16 Superior Court. (*See* Mot.) The Andrukovs failed to respond to Deutsche Bank's
17 motion. (*See generally* Dkt.)

18 On December 12, 2016, Magistrate Judge Brian A. Tsuchida ordered the
19 Andrukovs to cure certain deficiencies in their IFP application. (1st Order (Dkt. # 4).)
20 Magistrate Judge Tsuchida noted that the IFP application was deficient "because only
21 Ms. Andrukov [had] completed and signed it" and to be eligible for IFP status, each
22 defendant needed to file a completed IFP application. (*Id.* at 1 (citing Local Rules W.D.

1 Wash. LCR 3(b)) (noting that Alex Andrukov, Denis Kristal, and “other unknown
2 occupants” were also listed as Defendants.) Accordingly, Magistrate Judge Tsuchida
3 ordered that all defendants seeking IFP status complete and return separate IFP
4 applications, or pay the filing fee, by January 6, 2017. (*Id.* at 2.)

5 The Andrukows failed to cure their IFP application deficiencies by the date
6 specified in Magistrate Judge Tsuchida’s order. (*See generally* Dkt.; *see also* R&R (Dkt.
7 # 8) at 1.) On January 9, 2017, Magistrate Judge Tsuchida recommended that, if no
8 objections were received by January 23, 2017, and no filing fee was paid within 30 days
9 of the order, the court should deny Ms. Andrukov’s IFP application and close the file.
10 (Proposed Order (Dkt. # 8-1) at 1.) This court adopted Judge Tsuchida’s report and
11 recommendation on January 30, 2017.¹ (2d Order.)

12 The court now considers Deutsche Bank’s motion to remand this action to state
13 court.

14 III. ANALYSIS

15 Deutsche Bank moves to remand the suit because the court lacks subject matter
16 jurisdiction. (Mot. ¶¶ 2-3.) Deutsche Bank argues that the complaint does not invoke
17 federal question jurisdiction under 28 U.S.C. § 1331 or diversity jurisdiction under 28
18 U.S.C. § 1332. (*Id.* ¶¶ 2-3.) Deutsche Bank claims the Andrukows have not asserted any
19 facts that demonstrate a violation of federal law or the federal Constitution, and the

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¹ The court previously adopted Magistrate Judge Tsuchida’s report and recommendation,
22 and stated that the Clerk would close this file if the Andrukows did not pay their filing fee within
30 days of the date of the order. (2d Order (Dkt. # 9).) This order supersedes the portion of that
order directing the Clerk to close the file.

1 dispute does not meet the amount in controversy requirement for diversity jurisdiction.²
2 (*Id.* ¶¶ 2-3.)

3 The Andrukows removed pursuant to (1) 28 U.S.C. § 1331, alleging violations of
4 the Fourth and Fourteenth Amendments, the Fair Housing Act, and the Americans with
5 Disabilities Act, and (2) 28 U.S.C. § 1332, alleging complete diversity and an amount in
6 controversy exceeding \$75,000.00 (Notice at 2.) The Andrukows claim that removal is
7 proper under 28 U.S.C. § 1332 because they are Washington residents, whereas Deutsche
8 Bank is headquartered in New York. (*Id.* at 2-3.)

9 A defendant may remove an action filed in state court when the district courts of
10 the United States have original jurisdiction. 28 U.S.C. § 1441(a); *see also Caterpillar*
11 *Inc. v. Williams*, 482 U.S. 386, 392 (1987). The subject matter jurisdiction of federal
12 courts is limited by 28 U.S.C. §§ 1331-32. Courts strictly construe these statutes against
13 removal. *Luther v. Countrywide Home Loans Servicing, LP*, 533 F.3d 1031, 1034 (9th
14 Cir. 2008).

15 **A. Federal Question Jurisdiction**

16 Under 28 U.S.C. § 1331, “[t]he district courts shall have original jurisdiction of all
17 civil actions arising under the Constitution, laws, or treaties of the United States.”
18 Whether an action arises under the Constitution, laws, or treaties of the United States is

19 ² Deutsche Bank further argues that under Washington state law its action was properly
20 filed in the Whatcom County Superior Court. (Mot. ¶¶ 2-3 (citing RCW 4.12.010; RCW
21 59.12.050).) Deutsche Bank contends that counterclaims may not be asserted in an unlawful
22 detainer action and once a trustee’s sale is final, the remedies of a borrower who failed to enjoin
the non-judicial foreclosure are limited to (a) common law fraud, (b) a violation of title 19 of the
Revised Code of Washington, and (c) a failure of the trustee to materially comply with the Deed
of Trust Act. (*Id.* ¶¶ 6-7 (citing *Garant v. Keasler*, 663 P.2d 830 (Wash. 1983); RCW
61.24.127(1)(a)-(c)).)

1 "determined from what necessarily appears in the plaintiff's statement of his own claim
2 in the bill or declaration, unaided by anything alleged in anticipation of avoidance of
3 defenses which it is thought the defendant may interpose." *Aetna Health Inc. v. Davila*,
4 542 U.S. 200, 207 (2004) (quoting *Taylor v. Anderson*, 234 U.S. 74, 75-76 (1914)). The
5 federal question must be disclosed on the face of the complaint and may not be aided by
6 the answer or the petition for removal. *Int'l Union of Operating Eng'rs v. Cty. of*
7 *Plumas*, 559 F.3d 1041, 1044 (9th Cir. 2009) (quoting *Gully v. First Nat'l Bank*, 299 U.S.
8 109, 113 (1936)).

9 The Andrukows have failed to demonstrate that this action "aris[es] under the
10 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Although the
11 Andrukows allege violations of the Fourth and Fourteenth Amendments, the Fair Housing
12 Act, and the Americans with Disabilities Act (Notice at 2), Deutsche Bank does not raise
13 any of these violations in its complaint (*see generally* Compl.). Because a federal
14 question must be disclosed on the face of the complaint and may not be aided by the
15 answer or the petition for removal, the Andrukows' allegations are insufficient to remove
16 this case to federal court under 28 U.S.C. § 1331. (*See generally* Compl.); *see also Aetna*
17 *Health*, 542 U.S. at 207 (quoting *Taylor*, 234 U.S. at 75-76); *Gully*, 299 U.S. at 113.

18 **B. Diversity Jurisdiction**

19 Where an action does not arise under the Constitution, laws, or treaties of the
20 United States, a federal district court may still have jurisdiction if the amount in
21 controversy exceeds \$75,000.00 and the action is between citizens of different states. 28
22 U.S.C. § 1332(a). If the amount in controversy is unclear on removal, "the defendant

1 bears the burden of actually proving the facts to support jurisdiction, including the
2 jurisdictional amount.” *Gaus v. Miles*, 980 F.2d 564, 567 (9th Cir. 1992) (holding that
3 the amount in controversy requirement was not met on removal where the defendant
4 “offered no facts whatsoever to support the court’s exercise of jurisdiction” and simply
5 alleged that the amount in controversy was sufficient).

6 As in *Gaus*, the Andrukows have failed to meet their burden of establishing that the
7 amount in controversy exceeds \$75,000.00. Although the Andrukows allege in their notice of
8 removal that the amount in controversy exceeds \$75,000.00 (Notice at 2), they do not provide
9 any facts to support this amount (*see generally id.*). Deutsche Bank asserts in its motion to
10 remand that the amount in controversy is \$0.00 (Mot. at 2), but its complaint requests “the
11 amount of any accrued rent or other charges owing, and for such other relief as the court finds to
12 be just and equitable.” (Compl. ¶ vi.) Nevertheless, there is no evidence or factual allegations
13 from which the court could infer that the incurred rent or other charges requested by Deutsche
14 Bank exceed \$75,000.00. The burden rests on the Andrukows to provide facts supporting an
15 amount in controversy exceeding \$75,000.00 in order to satisfy the requirements for diversity
16 jurisdiction under 28 U.S.C. § 1332. *See Gaus*, 980 F.2d at 567. The Andrukows have failed to
17 do so.³ (*See generally* Dkt.)

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19 ³ A defendant may not remove a case on the basis of diversity “if any of the parties in
20 interest properly joined and served as defendants is a citizen of the State in which the action is
21 brought.” 28 U.S.C. § 1441(b)(2). The Andrukows are Washington state residents and are thus
22 barred from removing a case brought in Washington state court on the basis of diversity
jurisdiction. *See* 28 U.S.C. § 1441(b)(2). Deutsche Bank, however, did not raise this issue in its
motion (*see generally* Mot.) and the Ninth Circuit has held that “the forum defendant rule is
procedural, and therefore a violation of this rule is a waivable defect in the removal process that
cannot form the basis for a district court’s *sua sponte* remand order.” *Lively v. Wild Oats
Markets, Inc.*, 456 F.3d 933, 936 (9th Cir. 2006).

Because the Andrukows have not demonstrated federal question jurisdiction under 28 U.S.C § 1331 or diversity jurisdiction under 28 U.S.C. § 1332, the court lacks subject matter jurisdiction over Deutsche Bank’s unlawful detainer action and remands the case to Whatcom County Superior Court.

IV. CONCLUSION

Based on the foregoing analysis, the court GRANTS Deutsche Bank's motion (Dkt. # 6) and ORDERS as follows:

- (1) All further proceedings in this case are REMANDED to Whatcom County Superior Court in the State of Washington;

(2) Pursuant to 28 U.S.C. § 1447(c), the Clerk shall mail a certified copy of the order of remand to the Clerk for Whatcom County Superior Court;

(3) The Clerk shall also transmit the record herein to the Clerk for the Whatcom County Superior Court;

(4) The parties shall file nothing further in this matter, and instead are instructed to seek any further relief to which they believe they are entitled from the courts of the State of Washington, as may be appropriate in due course; and

(5) The Clerk shall CLOSE this case.

Dated this 3 day of March, 2017.

JAMES L. ROBART
United States District Judge